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ENVIRONMENTAL LAW

May 14, 2018

County of Santa Barbara
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

By email to sbcob@co.santa-barbara.ca.us

RE: Gaviota Coast Plan

Dear Chair Williams and Supervisors,

This office represents the Gaviota Coast Conservancy (GCC) and the Naples Coalition in this matter. The Gaviota Coast Plan (GCP) reflects the goals and objectives of the community that was developed with the input of a diverse range of stakeholders during the GavPac process, the expertise of County Staff and Planning Commissioners, and the input of the community at large. Now the Coastal Commission has weighed in, and as anticipated has proposed a series of modifications to the GCP's coastal zone policies and Coastal Zoning Ordinance (CZO) amendment.

Throughout the long process of developing, refining, and perfecting the GCP, perhaps the most difficult task has been figuring out how to maintain and enhance the viability of coastal agriculture, while simultaneously ensuring that the Gaviota Coast's uniquely valuable biological resources are protected. This tension is evident in the Board Letter, in which the two most significant issues concern permitting for agriculture and the definition of environmentally sensitive habitat (ESH) types (Board Letter Issues 1 and 3, respectively). Below, we propose a more modest solution to address both Issues 1 and 3 that does not require carving out a new exemption for agriculture or changing the ESH definition favored by the Coastal Commission. While we expect that the agricultural community may prefer the approach articulated in the Board Letter, we believe the approach described in this letter is responsive to the needs of coastal agricultural operations, is more likely to pass muster with the Coastal Commission and result in a certified and adopted GCP.

We cannot overstate the importance of avoiding a repeat of the failed LUDC/CZO update process, in which years of effort and resources were tossed out with no resolution to conflicts between County practice and the existing certified LCP that were identified in the process, including the County's uncertified practice of exempting new agriculture from permitting requirements. When the previous Board rejected the CZO as modified by the Commission, it did so with full knowledge that the same thorny issues, including the agricultural exemption, would re-arise with the then-draft GCP, and potentially in the context of a permit appeal or enforcement action (in which the existing certified LCP, as interpreted by the CCC, controls). For this reason, retaining the status quo does not mean that agriculture is exempt in the coastal zone.

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1. Agricultural Exemption

The CZO amendment approved by the Board and transmitted to the Coastal Commission listed “Cultivated Agriculture, Orchard, Vineyard” and “Grazing” as “P”, “Permitted use, Coastal Permit required”.¹ Coastal Commission staff added two exemptions from this coastal permit requirement for “Cultivated agriculture, orchards, and vineyards, historic legal use”, and “Grazing, historic legal use”. Discussed below, additional clarifying language must be added to these exemptions to establish that customarily incidental agricultural activities that support the historic use are also exempt. Otherwise, farmers and ranchers would be forced to choose between limiting their operations to specific activities conducted historically or risking a potential LCP violation for initiating a new agricultural practice. **We propose that agricultural activities conducted within the footprint of historical agricultural operations, that are supportive of and customarily incidental to the historic agricultural operation, be exempt regardless of whether that particular activity occurred historically on that particular site.**

We disagree with County Staff’s recommendation insofar as it recommends an exemption for entirely new agricultural operations on virgin ground. Discussed in the next section regarding ESHA, Coastal Staff has provided compelling evidence justifying a broader definition of ESHA, and in this context, Coastal permitting and biological surveys (*see* section 2) help to protect ESHA. However, this broader ESHA definition, combined with the new biological survey requirement for all CDP applications proposed on lots that contain or may contain ESHA, underscores the importance of establishing a safe harbor for uses that advance other coastal resource protection goals including the protection of viable agriculture. In this regard, we agree with County Staff that clarification is needed as to the nature and extent of proposed exemptions for historic agricultural operations, and propose the following (new text underlined):

Definitions:

Coastal Resources. Any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, California Public Resources Code Section 30200 et seq., including but not limited to public access, marine and other aquatic resources, environmentally sensitive habitat, prime and economically viable agricultural land and uses, and the visual quality of coastal areas.

EXPLANATION: underlined text elevates prime agricultural lands and viable agricultural uses. Chapter 3 of the Coastal Act also defines agricultural land, encompasses viability of

¹ See <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=2897412&GUID=26AF2907-4CCE-457B-9E43-32B4CAF62D2E&Options=&Search=>, Exhibit B Ordinance No 4984. It is unclear whether this was an intentional or inadvertent departure from the Planning Commission’s version of the CZO which listed these uses as “E” “Allowed use, no permit required (Exempt)”, but certainly may have figured into the CCC’s stronger position than in the LUDC process.

existing agricultural uses; and has higher standards of protection for prime agricultural lands.

Permit Exemption language in CZO:

Cultivated agriculture, orchards, and vineyards, historic legal use. Cultivated agriculture, orchards, and vineyards, where the agricultural activities occur within existing areas of ongoing cultivated agriculture, orchards, and vineyards and where there is evidence of ongoing agricultural use on the site within the previous 10 year period do not constitute “development” and therefore do not require a permit. The historic legal use encompasses associated agricultural activities within areas of historic use including crop rotation, soil enhancement, compost application, creation of pollinator habitat, irrigation system changes, and similar agricultural activities that support the historic legal use and enable the operation to respond to changing conditions. New or expanded cultivated agriculture, orchards, and vineyards are not exempt and shall be subject to the permit requirements of Table 18-2 (Allowed Land Uses and Permit Requirements for the Gaviota Coast Plan Area).

Grazing, historic legal use. Grazing, when located in existing areas of ongoing grazing, including the normal rotation of livestock from one pasture to another, and where there is evidence of ongoing grazing use on the site within the previous 10 year period does not constitute “development” and therefore does not require a permit. The historic legal use encompasses associated agricultural activities within areas of historic use including fencing for pastures², rangeland enhancement, compost application, livestock watering system changes, and similar agricultural activities that support the historic legal use and enable the operation to respond to changing conditions. New or expanded grazing areas are not exempt and shall be subject to the permit requirements of Table 18-2 (Allowed Land Uses and Permit Requirements for the Gaviota Coast Plan Area).

EXPLANATION: underlined text defines exempt routine agricultural activities to provide clarity to agriculturalists and their operations when permits may be, or are not required

² Note the existing certified LCP exempts fences, walls, gates and gateposts in agricultural zones (CZO § 35-123.2).

2. Proposed ESHA Modifications

The very well researched memo by Coastal Commission Staff biologist Jonna Engle identifies the following unique, valuable, and special features of the Gaviota Coast as supporting Coastal Staff's ESHA determination:

- It is one of only five locations in the world where Mediterranean Ecosystems, one of Earth's rarest biomes, persist,
- It is identified and recognized as one of the World's biodiversity hotspots where the marine realm and terrestrial ecosystem are equally diverse,
- It has "outstanding representative natural communities that have values ranging from a particularly rich flora and fauna to an unusual diversity of species."
- It supports a wealth of rare terrestrial habitats and rare and endemic species,
- It harbors important genetic diversity in both marine and terrestrial species at the northern or southern extent of their ranges, and
- It is a rural landscape comprised of large swaths of undeveloped and relatively pristine native habitat and wildlife corridors able to support large mammals such as black bears, mountain lions, coyotes, and bobcats that require large territories.

The Engle memo explains, in detail, why large and relatively unfragmented native chaparral habitat is especially valuable because of its special role in the Gaviota Coastal Mediterranean Ecosystem, and accordingly should be designated ESH. (See pages 22-23.) There are relatively limited areas of this unfragmented native chaparral within the Coastal Zone; the Board Letter describes the affected area as follows:

Native chaparral exists within the Coastal Zone portion of the Gaviota Coast Plan area north of U.S. Highway 101 on the Arroyo Hondo Preserve property extending westward to the easterly portion of the Hollister Ranch properties. See Figures 2-1 and 2-2 of the Gaviota Coast Plan for maps that show the distribution of chaparral in the Gaviota Coast Plan area (Attachment 7).

(Board Letter, p. 5; Attachment 7.) Thus, the Commission's broader ESH definition that includes native chaparral within the Coastal Zone has fairly limited effects on Gaviota Coast agricultural operations.

GCC's concern regarding the proposed ESHA modifications is related to the agricultural exemption issue, discussed above. Specifically, under the Commission's proposed modifications (Mod 13), CDP applications for new development on any lot that supports or potentially supports ESHA would also require a detailed biological survey. While GCC understands the value of these surveys, unless additional clarification is added (as proposed above) establishing that certain agricultural activities associated with historic agricultural operations are exempt from the CDP requirement, the CDP and attached biological survey requirement would be cost-prohibitive for most

agricultural operations. This in turn could have the unintended consequence of thwarting agricultural innovation that benefits the environment including planting and promoting native plants, regenerative agricultural practices that seek to enhance the quality, water retention, and carbon sequestration capability of soils. Our proposed clarification to the agricultural exemptions (above) is limited to uses that occur within the historically farmed or grazed area, so would not impact previously undisturbed areas. Establishing this safe harbor for existing agricultural operations would help alleviate concerns of the agricultural community regarding the proposed modifications broadening the ESH definition and requiring costly biological surveys in conjunction with CDP applications for routine agricultural operations on lots that may contain ESH.

Additionally, the GCP seeks to encourage new agricultural uses including agricultural processing facilities, composting, and aquaponics. We propose that to the extent these new uses require CDPs, that no biological survey requirement attach to CDPs for agricultural development proposed within existing developed areas, in disturbed areas adjacent to developed areas, or within the footprint of historical agricultural operations. Specifically, **we propose the following addition to section 35-430.C.3:**

Processing. In addition to other application requirements, an application for a Coastal Development Permit for any new development on a lot that supports native habitat, has habitat that may support rare species, may be part of a wildlife corridor, and/or potentially supports an Environmentally Sensitive Habitat (ESH) area, as defined in Policy NS-4, shall include a detailed biological study of the site, prepared by a qualified biologist, or resource specialist. This requirement does not apply to CDPs for agricultural development proposed within existing developed areas, in disturbed areas adjacent to developed areas, or within the footprint of a historical agricultural operation (see exemptions for cultivated agriculture and grazing, historic legal use). Site-specific conditions may dictate that additional study is required, such as protocol level surveys for listed species. At a minimum, the site-specific biological study must include the following elements...

3. Remaining Issues and Conclusion

We disagree with the Board Letter as to issues 2 and 4, where we believe the Coastal Commission's proposed modifications to be entirely appropriate. Issue 2 concerns the exclusion of accessory residential development from the Principally Permitted Use (PPU) on agriculturally zoned lands. As we understand it, this residential accessory development including guesthouses, cabanas, gazebos, and pools, is most likely associated with non-agricultural residential development, is not in any way supportive of agriculture, and accordingly is properly deemed a PPU. Home occupations, which the Board Letter characterizes as a particularly absurd use to require additional permit processes, are already exempt under the existing LCP provided they meet specified criteria.³

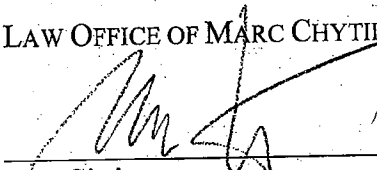
³ CZO § 35-121.5 (Exception to Permit Requirement for Home Occupation)

Issue 4 largely concerns the County's desire for consistency between the the GCP and its Coastal Resiliency Project which is currently under review and scheduled for an upcoming Planning Commission hearing, as to the required setback for bluff development to account for climate change and sea level rise. The Coastal Commission has recommended a 100-year setback, whereas the Climate Resiliency Project recommends a 75-100-year setback. Frankly, we do not perceive a conflict, and in any case the more conservative 100-year setback is justified and appropriate for the Gaviota Coast.

Once again, we strongly urge the Board to seek amicable resolution to the remaining issues of concern, and hope that the above proposals are useful in that process.

Respectfully submitted,

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